IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3992 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TEXEL INDUSTRIES LTD.

Versus

DY.SALES TAX COMMISSIONER (APPEALS)

Appearance:

1. Special Civil Application No. 3992 of 2004
MS AVANI S MEHTA for Petitioner No. 1
MR SIRAJ GORI AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 06/05/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr. Siraj Gori, learned AGP waives service of notice of Rule on behalf of the respondents.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 9.12.2003 passed by the Deputy Commissioner of Sales tax (Appeals) -I, Ahmedabad by which the petitioner has been called upon to deposit an amount of Rs.1,62,666/- under the Gujarat Sales tax Act and another amount of Rs.73,468/= under the Central Sales Tax Act. By the communication dated 9.12.2003 the petitioner has been informed by the authorities that if the aforesaid amounts are not deposited, the petitioner's appeals shall not be entertained.

3. The petitioner has contended that the petitioner is a sick industrial unit and it has been registered under section 15 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985 ('the SICA' for short) on 3.6.2002 (Annexure G to the petition) and that the petitioner has already paid Rs.22,96,000/- as Local Sales tax against the tax assessed at Rs.27,00,066/- but the authorities have levied interest at Rs.2 lakhs and odd and amount of penalty of Rs.2 lakhs and odd and that is how there is tax demand of Rs.8,13,338/- under the Gujarat Sales tax Act. Similarly, there is demand of Rs.3 lakhs plus under the Central Sales Tax Act against which the petitioner has paid Rs.1,31,079/-.

The petitioner's contention is that certain 'C' forms could not be produced before the assessing officer but now the petitioner is in a position to produce 'C' forms before the appellate authority and in that case the petitioner's tax liability would be substantially reduced by about Rs.4 lakhs or more. It is also submitted that since the petitioner is a sick industrial unit before the BIFR, for the dues prior to 3.6.2002 no coercive action can be taken in view of the provisions of section 22 of the SICA.

4. Mr.Siraj Gori, learned AGP for the respondents, opposes the petition and submits that the petitioner has not paid any amount against the tax demand at Annexure 'C' to the petition. That the appellate authority has rightly imposed the condition of pre-deposit of amounts

which is barely about 25% of the outstanding tax dues.

5. Having heard the learned counsel for the parties and considering the fact that the reference before the BIFR was registered on 3.6.2002 and a part of the tax demand is relating to the period prior to 3.6.2002 and also the statement being made on behalf of the petitioner that the petitioner is in a position to produce 'C' forms before the appellate authority, we are of the view that interests of justice would be served if the respondent authorities are directed to consider and decide the petitioner's appeals subject to the condition that the petitioner deposits Rs.50,000/- in two equal monthly installments, of which the first installment shall be paid by 15.5.2004 against the Local Sales Tax and the second installment shall be paid by 15.6.2004 against the Central Sales Tax. After the aforesaid amounts are deposited, the appellate authority shall decide the petitioner's appeals as expeditiously as possible and preferably by 31.7.2004. The appellate authority shall also consider the petitioner's request for production of 'C' forms at the appellate stage.

6. The petition is accordingly partly allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent with no order as to costs. Ad-interim relief granted earlier shall continue till disposal of the appeals before the first appellate authority subject to the conditions stipulated in para 5 of this judgment.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)